



FITZPATRICK CELLA HARPER & SCINTO  
30 ROCKEFELLER PLAZA  
NEW YORK NY 10112

**MAILED**

OCT 26 2010

In re Application of  
Jean-Paul Accarie et al.  
Application No. 10/724,701  
Filed: December 2, 2003  
Attorney Docket Number: 02997.002501

: OFFICE OF PETITIONS  
:  
: DECISION GRANTING PETITION  
:  
:

This is a **CORRECTED** decision on the petition to withdraw the holding of abandonment, filed May 5, 2009, under 37 CFR 1.181, in accordance with the reasoning of the decision in Delgar Inc. v. Schuyler, 172 USPQ 513. The decision on petition dated May 22, 2009 is hereby vacated.<sup>1</sup> In this regard, prosecution subsequent to the petition decision of May 22, 2009 is also vacated.

The petition is **GRANTED**.

This application became abandoned for failure to timely respond to an Final Office Action mailed April 30, 2008 which set a three month period for response. No response having been filed or extension of time requested, this application became abandoned July 31, 2008. Accordingly, a Notice of Abandonment was mailed December 22, 2008.

The file record discloses that the Office Action was mailed April 30, 2008 to the address of record, the same address to which the Notice of Abandonment was mailed and received. However, petitioner contends that the Office Action was not received and that the Office Action was returned to the USPTO. Petitioner has also submitted copies of their docket to substantiate their claim.

A review of the USPTO files reveal that the Office Action was in fact returned to the USPTO by the United States Postal Service on May 1, 2008 and no apparent reason can be determined since it appears that the address of record was placed on the correspondence. In view of the facts set forth in the petition, it is concluded that the Office Action was never received.

---

<sup>1</sup>The decision dated May 22, 2009 incorrectly indicated that a response to the Final Office Action was filed May 5, 2009. A review of the record does not reveal that a response was filed with the Petition filed May 5, 2009.

This application is being forwarded to the Technology Center 2445 for a re-mailing of the Final Office Action originally dated April 30, 2008 and for a restarting of the period for response.

Telephone inquiries concerning this matter should be directed to Senior Petitions Attorney Patricia Faison-Ball at (571) 272-3212.



Anthony Knight  
Director  
Office of Petitions